

REMARKS

A. Summary of the Claims

1. The pending claims are numbers 7, 8, 25 and 31-45:
2. The canceled claims are numbers 1-6, 9, 14-18 and 27-30.
3. The withdrawn claims are numbers 10-13, 19-24 and 26.
4. Of the pending claims there are:
 - (a) independent product claim 31 and claims 7, 8 25 and 32-34 dependent on claim 31,
 - (b) independent product claim 35 and claims 36 and 37 dependent on claim 35,
 - (c) independent product claim 41 and claims 42-45 dependent on claim 41, and
 - (d) independent method claims 38, 39 and 40.

B. Amendments to the Specification

The specification is amended merely to copy into the formal specification text from original claims 3, 4 and certain structural description of embodiments of the new toothbrush. Specifically, amendments in the specification are:

- (1) on page 7, line 24 there is added the description of the threshold force as 2-12 ounces, as disclosed in original claim 7, and
- (2) on page 8, line 1 the specification is amended merely to copy into the formal specification from original claims 3 and 4 the description of the movement of the head part by an angle of at least 10° (from claim 3) or an angle of about 20° (from claim 4).

These amendments do not constitute new matter, as the substance

therein was in the claims of the originally filed application which is deemed part of the original disclosure. This is further supported in the drawings where Fig. 1 includes a 10° designation, and numerous figures including Figs. 4A, 4C, 11 and 18, illustrate the head at an angle of about 20°, where it is movable from a latched position to the unlatched positions shown.

The degrees of angulation and the threshold force to actuate this device, as described above are applicable to any and all of the embodiments, including the elected species.

C. Applicant's Response to Paragraphs (1), (2) and (3) on page 2 of the Office Action

Attached hereto on pages 2-9 is a new substitute Listing of Claims to replace the Listing of Claims submitted with applicant's Amendment of 15 June 2005. It is believed that this substitute Listing of Claims is in proper form for entry. Claim 12, designated "amended and withdrawn" is dependent on Claim 11 according to an earlier paper; accordingly, a typographical error in claim 12 is corrected, as shown by the strike through in "9".

D. Claims Readable on Specified Species

Claims 31, 7, 8, 25, 32-34, 38, 39 are and 41-45 believed to be readable on the species illustrated in Figs. 11, 11A and 11B.

Claims 10-13, 19-24 and 26 are believed readable on the species illustrated in Figs. 1-4, 4A-4I, 5-10, 12B and 29-41, as they all include bi-stable spring means for urging the toothbrush head to either of two positions.

The subject invention as presented in the pending claims defines: (a) a toothbrush in product Claims 7, 8, 25, 31, 32-37 and 41-45, (b) methods of reducing risk of damage to teeth and gums in Claims 38 and 40, and (c) a method of teaching

how to avoid applying unsafe pressure to teeth and gums in Claim 39.

E. Discussion of the Rejections. The discussion below is repeated from the Amendment filed June 15, 2005. The references herein to withdrawn claims is included, because of the possibility that a generic claim will be allowed that has sufficient scope to include the withdrawn claims.

The rejection of claims 28-30 under 35 U.S.C. 102(b) as being anticipated by Hukuba, and the rejection of claims 1-10, 14-18, 25 and 27 under 35 U.S.C. 103(a) as being obvious over Hukuba are noted. The rejected claims have been amended in part and are now replaced by new claims 31-45 and amended claims 7, 8 and 25.

It is respectfully submitted that all of the now-pending claims are patentably distinguishable over Hukuba.

The chart below demonstrates certain of the differences and distinctions between representative pending claims and the Hukuba disclosure.

| Claim 31 | Hukuba |
|---|--|
| - motorless toothbrush | - electric motor driven toothbrush |
| - head part, upon release from first orientation, can flop freely | - head part is always coupled to the motor and can never flop freely |

| Claim 35 | Hukuba |
|---|---|
| - motorless toothbrush | - electric motor driven toothbrush |
| - head part connected to handle part only via hinge | - head part is coupled to both the handle part and to the motor |

| Claim 41 | |
|--|--|
| - motorless toothbrush | - electric motor driven toothbrush |
| - head part, upon release from first orientation, and is driven to and restrained in said second orientation | - head part always coupled to motor and constantly changing orientations |

Furthermore, as discussed in the remarks and arguments of the prior responsive amendment dated May 7, 2004, which is incorporated by reference herein, Hukuba teaches merely that the stroke of the head will be reduced as a result of excess force on the bristles. However, the toothbrush in Hukuba, when it experiences excess force, continues to be operable and in fact becomes more dangerous, because it is now operating while there is greater force of the bristles on the teeth and gums.

In contrast, the present invention renders the toothbrush inoperative when excessive force is applied, by causing the head to move or flop or snap into a non-usable orientation which position may be, as defined in claim 41, a second orientation where said head part is angled rearward from the axis of the handle. While the new toothbrush is inoperative, further pressure or scraping damage to the teeth and gums is not possible. In certain embodiments the head cannot be returned to its operative orientation and re-used unless and until a force of a pre-determined magnitude is applied in a forward direction.

New claims 41, 42, 43, 44 and 45 have antecedent basis in original claims 4, 7, 8 and 17 respectively and in portions of the specification found on page 7, line 8 through page 8, line 11, and on pages 2-4.

In view of the structural differences and objects and results, the present invention is totally different from Hukuba. The structure in Hukuba cannot satisfy or anticipate any of the pending claims under 35 U.S.C. 102, and also these claims cannot be obvious under 35 U.S.C. 103 from Hukuba, since no structure, operation, object or result in Hukuba is similar or even related to the present invention.

The remarks of the Examiner in the outstanding office action have been studied. It is believed that the issues raised are not applicable to the newly amended claims which now define more specific structure of the present invention.

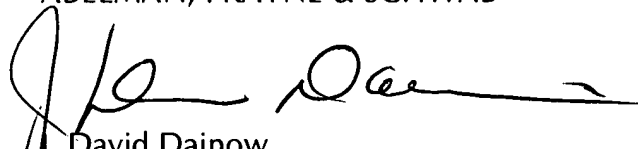
As a final point, it is respectfully submitted that the Examiner's suggestion that Hukuba is at times disabled or inoperative, is not correct. It is applicant's understanding that Hukuba is never disabled or inoperative; it merely changes from fully operative in one mode (full stroke) to fully operative in another mode (reduced stroke).

In view of the above amendments and distinctions, it is believed that all the pending claims are in condition for allowance. Accordingly, reconsideration and favorable actions are respectfully requested.

If any additional fees are due please charge same to our Deposit Account No. 01-0035 and if any additional extension of time is required, please consider this a petition for same.

Respectfully Submitted,

ABELMAN, FRAYNE & SCHWAB



J. David Dainow
Registration No. 22,959
666 Third Avenue, 10th Floor
New York, NY 10017-5621